

82-1084  
No.

Office - Supreme Court, U.S.  
**FILED**

DEC 17 1982

ALEXANDER L. STEVAS.

In The

**Supreme Court of the United States**

October Term, 1982

ROBERT CIRILLO AND FRANK COPOBIANCO,

*Petitioners,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

**HERBERT L. OCKS**

*Attorney for Petitioner  
Robert Cirillo*

113 South 21st Street  
Philadelphia, Pennsylvania 19103  
(215) 563-3200

**ANDREW G. GAY**

*Attorney for Petitioner  
Frank Copobianco*

1910 Spring Garden Street  
Philadelphia, Pennsylvania 19130  
(215) 567-7955

## **QUESTIONS PRESENTED**

Whether petitioners' Fourth Amendment rights and 18 U.S.C. §2518(10)(a) were violated by the search of their apartment pursuant to a search warrant, the affidavit in support of which contained, in material parts, (1) the contents of a public telephone conversation intercepted in direct violation of the minimization requirements of a wiretap authorization and (2) material misrepresentation concerning the contents of the intercepted conversation.

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE  
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE  
UNITED STATES:

Robert Cirillo and Frank Copobianco, petitioners herein, respectfully pray that a writ of certiorari issue to review the judgment order of the United States Court of Appeals for the Third Circuit made and entered March 19, 1982, affirming the order of the United States District Court for the Eastern District of Pennsylvania, which denied petitioners' motions to suppress evidence.

## **OPINIONS BELOW**

A bench memorandum (Appendix A, 1a) of the United States District Court for the Eastern District of Pennsylvania was dated and entered March 13, 1981 with the district court's order denying petitioners' motions to suppress evidence. No written opinion was rendered by the United States Court of Appeals for the Third Circuit.

## **JURISDICTION**

1. The judgment order of the United States Court of Appeals for the Third Circuit sought to be reviewed was dated and entered March 19, 1982.

2. An order of the United States Court of Appeals for the Third Circuit denying a petition for rehearing was made and entered April 16, 1982. An order extending the time in which to file a petition for a writ of certiorari to and including July 15, 1982, was dated and entered June 11, 1982.

3. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The constitutional and statutory provisions involved are: United States Constitution, Amendment IV; 18 U.S.C.A. §2518(10).

## **STATEMENT OF THE CASE**

In the United States District Court for the Eastern District of Pennsylvania, petitioner Copobianco entered guilty pleas to



two charges of Possession with Intent to Distribute Non-Narcotic Controlled Substances. Petitioner Cirillo entered guilty pleas to two charges of Possession with Intent to Distribute Non-Narcotic Controlled Substances and two firearms violations. At the time of their guilty pleas, both petitioners reserved the right to challenge on appeal the district court's denial of their motions to suppress evidence on the grounds that the physical evidence upon which the government's prosecution was based was seized in violation of the Fourth Amendment and 18 U.S.C. §2518(10).

On August 8, 1980, the government applied for and secured an order authorizing the interception of wire communications (Appendix D, 19a) which authorized the interception of wire communications over telephones (215) 332-7977 and (215) 335-9861, located in the Waiting Room Bar. The minimization requirements of the order with particular regard to telephone (215) 335-9861, a coin-operated public telephone, prohibited the interception of communications "unless it has been determined that either Charles T. Conwell, Michael James Mangini, Joseph Inadi, or Oscar Glassman are within the premises known as the Waiting Room Bar . . . ." A further minimization requirement of the order with respect to telephone (215) 335-9861, was that "monitoring shall cease after 30 seconds of conversation unless it has been determined that Charles T. Conwell, Michael James Mangini, Joseph Inadi, Jr., Thomas J. Walsh, Joseph Crosley or Oscar Glassman is a participant in the conversation." On August 25, 1980, Special Agent John Heilman of the Federal Bureau of Investigation monitored an outgoing telephone call from telephone (215) 335-9861 to telephone (215) 245-7238. One minute and forty-two seconds after the beginning of the conversation, the following dialogue was held between one Charles Hogan and petitioner Cirillo (G-48 at p. 3, Appendix D, 25a-26a):

"BC: So I got a real nice brand new  
Thompson machine gun, you know.



CH: Yeah.

BC: And between me and my partner we could come up with the other four. But we still would have the piece involved because we don't have no money. That's how come I'm working. I got the kid living with me, you know."

During the telephone conversation, petitioner Cirillo did not say where his residence was, nor that the person named "Frankie" to whom he refers in the conversation was his "partner", nor did he say that "Frankie" was petitioner Frank Copobianco. Nonetheless, following the intercepted conversation, the government applied for and obtained a search and seizure warrant, the affidavit in support of which (G-37, Appendix D, 36a), recited the following:

"1. On August 8, 1980, United States District Court for the Eastern District of Pennsylvania, by the Honorable Louis H. Pollak, authorized interception of telephone communications of (215) 335-9861 located at the Waiting Room Bar, 8212 Roosevelt Boulevard, Philadelphia, Pennsylvania, pursuant to Title 18, United States Code, Section 2510 *et seq.*, which order is currently sealed and impounded by order of Judge Pollak of the same day.

2. On August 25, 1980, at approximately 8:40 p.m., an incoming telephone call was received from an individual identifying himself as "Bob Cirillo" at the above-mentioned telephone number asking that this telephone call be returned by Charles Hogan at telephone number (215) 245-7238.

3. Your affiant has determined that the telephone (215) 245-7238, is registered to Frank Copobianco at Apartment N-15, 2555 Old Trevoise Road, Trevoise, Pennsylvania.

4. On August 25, 1980, at approximately 9:15 p.m., in an outgoing call from (215) 335-9861, an individual identifying himself as "Charlie" placed a telephone call to (215) 245-7238 and engaged in a conversation with Robert Cirillo.

5. In connection with a previous investigation, your affiant was in possession of voice exemplars submitted to the government by Charles Hogan, your affiant has compared the subject voice exemplars with the individual who placed the telephone call referred to in paragraph 4, hereinabove, and according to the judgment of your affiant, the caller referred to in paragraph 4 above is Charles Hogan.

6. In the course of the telephone conversation referred to in paragraph 4 hereinabove between Cirillo and Hogan, Cirillo advised Hogan that he could sell Hogan a Thompson submachine gun with ammunition including a "banana" clip and a "drum" clip; Cirillo further advised Hogan that Cirillo and his partner, "Frank", could provide Hogan with an additional four Thompson submachine guns.

7. During the telephone conversation referred to in paragraph 4 above, Cirillo advised Hogan that Cirillo was residing at the location where he took the return call from Hogan, identified hereinabove

in paragraph 3 as the residence of Frank Copobianco.

8. A check of criminal extracts reveals that Charles Hogan has been convicted nine separate times of crimes including gambling, obstruction of justice, burglary, larceny and possession of stolen goods.

9. Your affiant has caused a search to be made of the National Firearms Registration and Transfer Records of the Bureau of Alcohol, Tobacco and Firearms to determine whether Robert Cirillo and Frank Copobianco had any firearms registered to them. They did not.

10. A Thompson submachine gun is a 'machine gun' within the definition of Title 26, United States Code, Section 5845 (b)."

During the course of the hearing on petitioners' motion to suppress evidence, the government presented no evidence that prior to intercepting the 9:51 p.m. telephone conversation, Agent Heilman determined that one of the named individuals was within the Waiting Room Bar, nor that he determined that one of the named individuals was a participant to the conversation within thirty seconds after it commenced. His was therefore a blatant violation of both of the requirements of the district court's order. Further, the contents of the telephone conversation as it found its way into the affidavit in support of the search warrant, was materially misstated, in that petitioner Cirillo never said during the conversation that he was residing at the location which was searched as stated in the affidavit in support of the search warrant, nor that he could provide Hogan with an additional four Thompson submachine guns.

## REASONS FOR GRANTING THE WRIT

### I.

**The decision of the United States Court of Appeals for the Third Circuit conflicts with the decision of the United States Court of Appeals for the Sixth Circuit and the decisions of this Court on the same matter.**

The decision of the United States Court of Appeals for the Third Circuit affirming the order of the United States District Court for the Eastern District of Pennsylvania denying petitioners' motion to suppress evidence directly conflicts with the decision in *United States v. George*, 465 F. 2d 772 (6th Cir.). In *George*, the Court held inadmissible wiretap evidence secured in violation of a wiretap authorization, the minimization requirements of which limited interception of conversation to those periods when certain named individuals were within the premises. The *George* decision was based upon a violation of 18 U.S.C. §2518(10)(a), as well as this Court's decisions in *Desist v. United States*, 394 U.S. 244, 89 S. Ct. 1030, 22 L. Ed. 2d 248 (1968) and *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). Further, the Third Circuit's decision fails to recognize the prohibition against the use of evidence obtained in violation of the Fourth Amendment as announced in *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407 (1963); and *Davis v. Mississippi*, 394 U.S. 721, 89 S. Ct. 1394 (1969).

In affirming the decision of the United States District Court for the Eastern District of Pennsylvania, the Third Circuit Court of Appeals has virtually sanctioned the use of information obtained by an illegal wiretap to support the issuance of a search warrant to seize the physical evidence necessary for the government's case.

**CONCLUSION**

For the foregoing reasons, a writ of certiorari should issue to review the judgment order of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

**HERBERT L. OCKS**  
*Attorney for Petitioner*  
*Cirillo*

**ANDREW G. GAY**  
*Attorney for Petitioner*  
*Copobianco*